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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,404	02/12/2002	Rudolf Gartner	22750/525	7026
26646	7590	06/01/2007		
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER JUSKA, CHERYL ANN	
			ART UNIT 1771	PAPER NUMBER
			MAIL DATE 06/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/074,404

Applicant(s)

GARTNER ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11,12,14,16,18 and 20-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11,12,14,16,18 and 20-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>05/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. Applicant's amendment filed with the RCE on April, 2, 2007, has been entered. Claims 11, 22, 24, 27, and 31 are amended as requested. Claims 1-10, 13, 15, 17, and 19 have been cancelled. Thus, the pending claims are 11, 12, 14, 16, 18, and 20-33.

3. Said amendment is sufficient to withdraw the claim objections set forth in section 3 of the last Office Action (Final Rejection, 12/14/06). Additionally, said amendment is sufficient to withdraw the 112, 1st rejection set forth in section 4 of the last Office Action. However, despite said advances in prosecution, the claims are not in condition for allowance in view of the new rejection set forth below.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11, 12, 14, 16, 18, and 20-33 are rejected under 35 USC 103(a) as being unpatentable over JP 10-273873 issued to Watanabe in view of US 4,497,097 issued to Schneider et al.

Watanabe teaches a base fabric for tufted carpets comprising a nonwoven fabric layer A consisting of continuous filaments having a fiber size of 2-6 denier (2.2-6.6 dtex) and nonwoven fabric layer B consisting of continuous filaments having a fiber size of 6-15 denier (6.6-16.6 dtex) (abstract). The two fiber layers are interlaced by needlepunching (abstract). The needled nonwoven is then pressure welded with heat (abstract).

Thus, Watanabe teaches the claimed invention comprising the step of bonding fibers or filaments having a titer of 6-15 dtex by needling with the exception of the claimed stretching step. However, it is well known in the art to stretch a nonwoven in order to further improve the strength and stability thereof. For example, Schneider teaches stretching a spunbond nonwoven by 20-200% of the original length at a temperature below the crystallite melting point in the direction of the lesser tensile strength in order to increase said strength thereof (abstract). Additionally, Schneider discloses it is known in the art to stretch nonwoven webs in the longitudinal direction during needle-punching by breaking the process down into numerous individual small stretching steps in order to improve the longitudinal tensile strength (col. 1, line 56 – col. 2, line 11). Hence, it would have been obvious to one skilled in the art to longitudinally stretch the needled nonwoven of Watanabe between needling stages in order to

increase the tensile strength thereof. Therefore, claim 11 is rejected as being obvious over the prior art.

With respect to claims 12 and 29, while the cited prior art fails to teach a finishing agent for improving mobility of the fibers or filaments, it is argued said claim is obvious over the art. Specifically, finishing agents for improving mobility (i.e., lubricating oils) are conventional in the textile art. Applicant is hereby given Official Notice of this fact. To adequately traverse such a finding, applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. Therefore, it would have been readily obvious to one skilled in the art to employ a lubricant in order to aid in mobility of the fibers during needlepunching and/or stretching. Hence, claims 12 and 29 are also rejected.

Regarding claim 14, while the cited prior art fails to teach an additional treatment with a pair of heated rollers, it is argued said claims are obvious. Specifically, it is well known in the art that calendaring a fabric (i.e., treatment between a pair of heated rollers) is a conventional finishing step. Applicant is hereby given Official Notice of this fact. Therefore, it would have been readily obvious to one skilled in the art to calendar the nonwoven of the cited prior art in order to produce a finished product. Hence, claim 14 is also rejected.

Additionally, regarding claims 16, 18, and 20, while the cited prior art fails to teach calendaring with rollers having embossing points (i.e., embossing), it is argued said claims are obvious. Specifically, embossing is a well known method of bonding nonwovens and/or creating a textured surface of a nonwoven. Applicant is hereby given Official Notice of this fact. Therefore, it would have been readily obvious to one skilled in the art to emboss the nonwoven

of the cited prior art in order to produce a bonded and/or textured product. Furthermore, the claimed surface roughness and the shape and area of embossing points are deemed obvious over the prior art. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. The surface roughness, point shape and area are all variables that one skilled in the art can readily determine in order to produce a desired bond area and texture. Therefore, claims 16, 18, and 20 are also rejected.

Regarding the limitations to mass per unit area and density, the prior art fails to teach these limitations. However, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, it would have been readily obvious to one skilled in the art to select an appropriate basis weight and/or density in order to produce a desired weight and thickness of the final end-product. Additionally, the claimed modulus values would obviously be provided upon modification of the Watanabe invention by the teachings of the prior art. Like materials cannot have mutually exclusive properties. Therefore, claims 21, 22, 24, 27, 30, and 31 are rejected.

With respect to the limitations that the nonwoven is polyethylene terephthalate (i.e., polyester) or polypropylene, the cited prior art fails to explicitly teach the fiber materials employed. However, it is argued these limitations are obvious over the art. Specifically, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Polyester and polypropylene are two very common fiber compositions employed in nonwoven materials. Additionally, the claimed modulus values would obviously be provided upon modification of the

Art Unit: 1771

Watanabe invention by the teachings of the prior art. Like materials cannot have mutually exclusive properties. Therefore, claims 23, 25, 26, 28, 32, and 33 are also rejected.

Conclusion

6. The art made of record and not relied upon is considered pertinent to applicant's disclosure.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
May 28, 2007